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10/791,345	03/02/2004	Larry B. Gray	JJI0049USACON	2428
27777	7590	07/12/2011	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			BUI, VY Q	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/791,345  
Filing Date: March 02, 2004  
Appellant(s): GRAY ET AL.

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/Paul A. Coletti/  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 4/18/2011 appealing from the Office action mailed 9/29/2010.

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**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 20-37.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

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**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

5,776,161

Globerman

7-1998

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 20-37 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Globerman-5,776,161.

As to claims 20-37, Globerman-'161 (Figs. 14-15; C 7, L 14-31 and reproduced partial of F. 14 below) discloses stent 30 comprising generally straight connector members 35 connecting circumferential springs or cylindrical rings 33. Each of springs or rings 33 comprises circumferentially spaced struts AB and CD. Each strut AB or CD has first end portion, second end portion and a curved portion in between being connected to a 1<sup>st</sup> and 2<sup>nd</sup> immediately adjacent struts substantially as recited in the claims.

As to claims 21 and 30, springs or rings 33 comprising wavy struts AB, CD having a curved portion including at least two curves.

As to claims 22, 27-28, 31, 36-37, Globerman-'161 (C. 1, L 21-33) discloses stent of stainless steel (balloon expanding stent) or stent of shape memory (self expanding stent) substantially as recited in the claims.

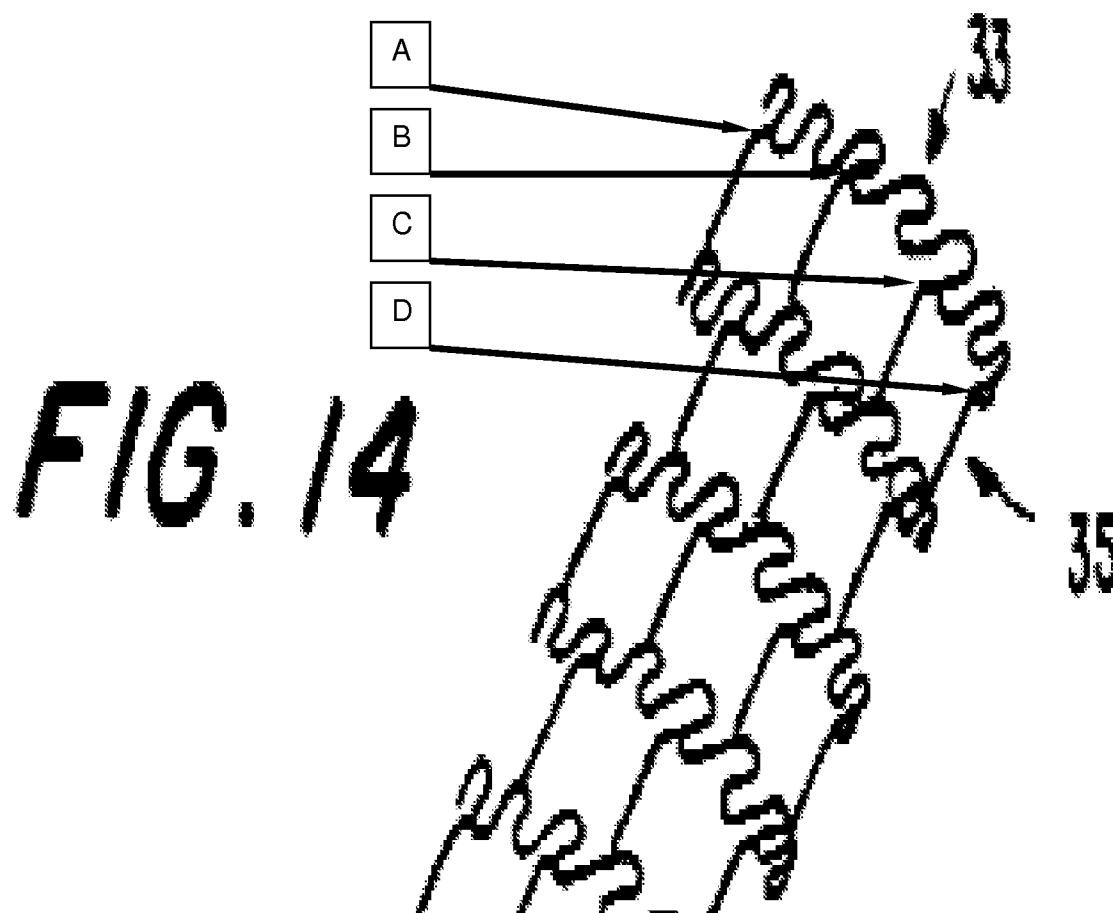
As to claims 23 and 32, struts of springs or rings 33 comprising wavy struts generally in phase with one another.

As to claims 24 and 33, 1<sup>st</sup> end portion and 2<sup>nd</sup> end portion of wavy struts AB, BC, CD are curved.

As to claims 25 and 34, wavy struts AB, BC, CD of springs or rings 33 are generally continuous waves along a line segment on the cylindrical surface of the stent and substantially parallel to the longitudinal axis of the stent.

As to claims 26 and 35, Globerman-'161 (F 2-3 and 14-15) discloses wave rings/springs become straighter in an expanded configuration.

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### ***Double Patenting***

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

A "Terminal Disclaimer" was filed 3/1/2011 to overcome the double patenting rejection in "Final Office" action (paper 9/29/2010). However, this "Terminal Disclaimer" has been disapproved (paper 6/22/2011) because the person who signed the terminal disclaimer does not have power of attorney, and thus, is not of record.

### **(10) Response to Argument**

Applicant's arguments filed 7/14/2010 have been fully considered but they are not persuasive.

1. The Applicant ("Appeal Brief", paper 4/18/2011: page 5) argued that: "It is respectfully submitted that the Examiner has oriented the stent in Globerman incorrectly. For instance, the "ring" of Figures 14-15 is neither a "cylindrical ring" nor a "cylindrical spring," as claimed. It does not lie along the longitudinal axis, but rather lies orthogonal to the longitudinal axis. This can best be seen in reviewing Figure 14 of Globerman or as in the markup provided by the Examiner in the Final Office Action."

Examiner's response: This is not persuasive because:

First, please notice that the term "***cylindrical***" (in the phrases, such as "***cylindrical*** ring" or "***cylindrical*** spring") as recited in the above arguments is not found anywhere in the claims.

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Second, wavy springs or rings 33 (Figure 14 of Globerman, for example) extend in a circumferential direction perpendicular to the longitudinal axis of the stent. Further, springs / rings 33 lie on a cylindrical surface of the stent, which cylindrical surface is parallel to the longitudinal axis of the stent, as such, springs or rings 33 are indeed disposed along the longitudinal axis of the stent as recited in the claims.

2. The Applicant ("Appeal Brief", paper 4/18/2011: page 5) argued that: "As a result, the alleged "connectors" (in Globerman) do not connect "a ring" or "a spring" at any of the end portions of the struts of Globerman. Simply put, in Globerman Figures 14-15, there are NO rings or springs oriented as claimed. As a result, the properly construed embodiment of Globerman does not anticipate or render obvious Claims 20-37. The proper orientation of the Globerman stent was recognized by the Examiner in the Advisory Action of March 1, 2010, but seems to have been ignored in the present action; and the Examiner has reverted to his former (and improper) reading of Globerman."

Examiner's response: This is not persuasive for the below reasons:

First, as indicated above, springs or rings 33 (Figure 14 of Globerman, for example) meet all limitations as recited in the claims.

Second, generally straight connectors 35 (Figure 14 of Globerman, for example) connect immediately adjacent springs / rings 33 of the stent in a manner as recited in the claims.

### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.



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Respectfully submitted,

/Vy Q. Bui/

Primary Examiner, Art Unit 3773

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